



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

March 4, 2015

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Donald Alexandre**
Tax Registry No. 937856
24 Precinct
Disciplinary Case No. 2013-9623

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on July 15, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2013-9623

1. Said Police Officer Donald Alexandre, while assigned to the 24th Precinct and on duty, on February 23, 2012, at approximately 3:20 hours [sic], in the vicinity of 102nd Street and Riverside Drive, New York County, did abuse his authority as a member of the New York City Police Department, in that he frisked Person A without requisite legal authority.

P.G. 212-11, Page 1, Paragraph 2

STOP AND FRISK

2. Said Police Officer Donald Alexandre, while assigned to the 24th Precinct and on duty, on February 23, 2012, at approximately 3:20 hours [sic], in the vicinity of 102nd Street and Riverside Drive, New York County, did abuse his authority as a member of the New York City Police Department, in that he searched Person A without requisite legal authority.

P.G. 212-11, Page 1, Paragraph 3

STOP AND FRISK

This Amended Memorandum **supersedes** the previous Memorandum originally dated February 19, 2015 regarding Disciplinary Case No. 2013-9623. Should there be any conflict between this Amended Memorandum and any other direction or memorandum, this Amended Memorandum shall control.

In a Memorandum dated December 30, 2014, Assistant Deputy Commissioner Robert W. Vinal found the Respondent Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2013-9623. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter and deem that a lesser penalty is warranted. Therefore, Police Officer Alexandre is to receive a Reprimand.



William J. Bratton
Police Commissioner



POLICE DEPARTMENT

December 30, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Donald Alexandre
Tax Registry No. 937856
24 Precinct
Disciplinary Case No. 2013-9623

The above-named member of the Department appeared before me on
July 15, 2014, charged with the following:

1. Said Police Officer Donald Alexandre, while assigned to the 24th Precinct and on duty, on February 23, 2012, at approximately 3:20 hours [sic], in the vicinity of 102nd Street and Riverside Drive, New York County, did abuse his authority as a member of the New York City Police Department, in that he frisked Person A without requisite legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

2. Said Police Officer Donald Alexandre, while assigned to the 24th Precinct and on duty, on February 23, 2012, at approximately 3:20 hours [sic], in the vicinity of 102nd Street and Riverside Drive, New York County, did abuse his authority as a member of the New York City Police Department, in that he searched Person A without requisite legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

The Civilian Complaint Review Board was represented by Gretchen Robinson, Esq. and Remi Groner, Esq. Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on February 23, 2012 at about 0320 hours, Respondent was on duty, in uniform, assigned to the 24 Precinct, performing patrol duties as the operator of a marked Radio Motor Patrol car (RMP) partnered with Police Officer Juan Duprey who was acting as recorder.

The Civilian Complaint Review Board's Case

The Civilian Complaint Review Board (CCRB) called CCRB Investigator Alexander Schiavo as its sole witness.

CCRB Investigator Alexander Schiavo

Schiavo testified that he was assigned to investigate a complaint made by Person A. On March 20, 2012, he conducted a recorded in-person interview of Person A. [The CCRB prosecuting attorney offered the transcript of the recorded interview in evidence as

CCRB Exhibit (CCRBX) 2 after the CCRB prosecuting attorney stated that her efforts to get Person A to appear in the Trial Room to testify had been unsuccessful.^{1]}

At the interview, Person A told Schiavo that on February 22, 2012 at about 3:15 a.m., he was walking northbound on Riverside Drive toward the 110th Street train station when an RMP pulled up next to him. The driver (Respondent) told him that a lot of vehicles that had been broken into in the area and asked him why he was looking into cars. Person A responded that he had not been looking into cars and that he had “nothing to do with that.” Respondent asked Person A whether he had burglar tools on him and stated that if he had anything illegal on him, he would find it. Person A told Respondent, “You have no reason for you to search me.” Respondent then told Person A to place his hands against a parked car. Person A asked, “Why? I ain’t do nothing wrong.” Respondent told Person A to do what he was told, he pushed Person A against a vehicle and then “pat frisked me and took...all my contents out my...pockets and found nothing and no contraband and asked me to...pull my pants down and take my shoes off.” Respondent’s partner stood by the RMP. Respondent frisked his jacket pockets and pant pockets and removed Person A’s wallet from his back pant pocket. Person A recalled that he had a pack of cigarettes in one pocket, a cell phone in another pocket, and a few dollars in bills and some coins in that pocket. Person A said that when he was stopped by Respondent he had one hand on his cane. His other hand was hanging at his side. He stated that he was never instructed by

¹ One trial date was cancelled because although Person A told the CCRB prosecuting attorney that he would appear to testify, on that date, he failed to do so. The CCRB attorney made four attempts to subpoena Person A, but she was unsuccessful each time. The day before this trial commenced, the CCRB attorney spoke with Person A who again agreed to appear in the Trial Room to testify. However, since Person A again failed to appear, the CCRB attorney offered Person A’s CCRB interview into evidence.

Respondent to remove his hand from his pocket, because neither of his hands were in his pockets at any point.

Respondent's Case

Respondent testified in his own behalf and called Duprey as a witness.

Respondent

Respondent testified that Riverside Drive within the 24 Precinct is an area where car break-ins and auto thefts have occurred. As Respondent and Duprey were driving on Riverside Drive at about 0330 hours, a man approached their RMP. The man told them that he had just seen a black male wearing dark clothing and holding a cane looking into parked cars and grasping door handles on the cars as if he was checking to see if the doors were unlocked. Respondent had observed a male who met this description walking on Riverside Drive but Respondent had driven past him because he was not engaging in any criminal activity. Respondent made a u-turn on Riverside Drive, drove to where he had passed the man with the cane, spotted him at 102nd Street, turned on the RMP's turret lights, and pulled over the RMP.

Respondent and Duprey got out of their RMP and approached the man, whose last name they soon learned was Person A. When Person A asked why he was being stopped, Respondent explained that someone had told them that he had seen Person A looking into cars. Respondent observed that Person A was wearing "field pants" that had side pockets around the middle thigh area on both legs of the pants. Respondent noticed that Person A's left pant side pocket was "a bit bulgy, it was protruding out," and Person A's "hand was moving towards it," so Respondent asked Person A to keep his hands up so that his hands

would be away from the bulge area. Person A was still holding his cane. Respondent did not take away Person A's cane because he did not want Person A to fall down and because he did not believe that Person A would use the cane as a weapon. Respondent confirmed that he was more concerned about the bulge in Person A's pocket.

When Respondent noticed that Duprey was looking into a nearby park, Respondent turned towards the park and saw a woman, who was walking her dog, adjusting her glasses and looking over at them. At that point, Person A let go of his cane, dropped to one knee, and screamed "Officer don't hit me!" three times. Person A then "lays down on the ground." Duprey picked up Person A's cane and Respondent grabbed Person A's hand. As Respondent "helped him up," Respondent placed his hand on the bulge on Person A's pant pocket. Respondent said the bulge in the pocket "felt like a object that was hard but it's also able to bend." Respondent removed this object which turned out be a very soiled book. Respondent also pulled out of Person A's pocket a copper "Brillo pad" which had small, broken glass shards in it and which Respondent believed could have been used as a filter in a crack pipe.

Duprey took Person A's ID and used it to prepare a Stop Question and Frisk Report. Before Respondent and Duprey left, Person A told them that he was going to call IAB. Shortly after Respondent and Duprey drove away, they received a phone call from a sergeant to return to the scene. After they arrived back at the scene, Respondent saw an Emergency Medical Service (EMS) ambulance there and heard Person A tell an EMS technician that Respondent had taken his cane and struck him with it on his knee and forehead. The EMS technician examined Person A and told him that he did not see any injuries. Person A cursed at the EMS technician and walked out of the ambulance.

On cross-examination, Respondent acknowledged that he had frisked Person A but he denied that he had searched him. Respondent asserted that his action of removing the soiled book and the copper pad from Person A's pants pocket did not constitute a search. When Respondent was asked, "A frisk is not taking things out of people's pockets, correct?" Respondent answered, "No, it's a pat-down." Respondent agreed that when he and Duprey stopped Person A all they knew was what they had been told by the man who asserted that he had seen Person A looking inside cars. When Respondent was asked, "Did you assume that he had a weapon?" Respondent answered, "Once I saw the bulge, yes." Respondent was confronted with a statement he made at his CCRB interview on July 11, 2012. At that interview, when he was asked whether he had frisked Person A before or after Person A fell down, Respondent answered that he had frisked Person A before he fell.

Police Officer Juan Duprey

Duprey testified, consistent with Respondent's testimony, that after the unidentified man flagged them down, they made a u-turn and stopped Person A. Duprey testified that Respondent had frisked Person A because of Person A's "very movement, so we were looking for any type of weapons that he might have possessed" and that he "could probably have burglar tools." Duprey testified that he was never in fear for his personal safety during their interaction with Person A. Duprey agreed that their suspicion that Person A possessed burglar's tools could be described as a hunch. He explained that "in that proximity we wouldn't know what he has so we have to make sure. We assume everyone has a weapon when we approach like that." Duprey testified that he observed some sort of bulge on Person A's clothing but he could not describe the bulge. Duprey was reminded

that during his CCRB interview on June 29, 2012, he had told his interviewers that he could not recall why Respondent had frisked Person A.

FINDINGS AND ANALYSIS

It is charged that while Respondent was on duty on February 23, 2012, in the vicinity of 102nd Street and Riverside Drive, Manhattan, he abused his authority by frisking Person A without requisite legal authority and by searching him without requisite legal authority.

I find Respondent guilty based solely on his own testimony. Respondent acknowledged that he had placed his hand on a pocket on Person A's pants and he testified that he knew that such a pat-down of the outside of a person's clothing constituted a frisk.

Patrol Guide Procedure 212-11 "Stop and Frisk," states that a uniformed member of the service may lawfully "frisk" a person only "if you reasonably suspect you or others are in danger of physical injury."² Respondent testified that the only reason he had to suspect that Person A might be carrying a weapon was because he saw a bulge in Person A's pants pocket.

Although at this trial Respondent asserted that his pat down of this bulge was performed contemporaneously with his helpful act of grabbing Person A's hand to help him get up from the ground, at his CCRB interview Respondent stated that his pat down of the bulge took place before Person A fell to the ground.

² Patrol Guide Procedure No. 212-11(2).

Even if I credited Respondent's claim that he saw a bulge in Person A's pants pocket, the mere observation of a bulge in a reachable clothing pocket, without more, does not entitle an officer to stop an individual much less frisk the individual.³

Moreover, it is clear that Respondent did not suspect that he or Duprey were in any danger of physical injury because they allowed Person A to maintain possession of his cane. Most significantly, Respondent acknowledged that as soon as he saw the bulge in Person A's pants pocket he assumed that the bulge could be a weapon. Since Respondent did not possess reasonable suspicion that Person A had a weapon on his person, Respondent's pat down of the bulge constituted an improper frisk.

As to the charge that Respondent searched Person A without requisite legal authority, Respondent admitted that when he patted the bulge, the object in Person A's pocket felt soft and had "bend," physical characteristics which are inconsistent with the normal physical characteristics of a weapon. Despite this fact, he immediately reached into the pocket he had patted and pulled out two objects. In his testimony, Respondent sought to characterize his placing of his hand into Person A's pocket and his removal of the objects as a mere continuation of his frisk, rather than a search.

However, Patrol Guide Procedure 212-11 defines "search" as "(t)o place hands inside pocket or other interior parts of clothing to determine if object felt is a weapon."⁴ Thus, Respondent's action of his placing of his hand into Person A's pocket to ascertain whether the object he had patted was a weapon constituted a search.

Since Respondent did not possess reasonable suspicion that Person A had a weapon on his person, his improper frisk was immediately followed by an improper search.

³ People v. Nelson, 57 NY2d 826, 455 NYS2d 757 (1982).

⁴ Patrol Guide Procedure No. 212-11 – DEFINITIONS.

Respondent is found guilty.

PENALTY

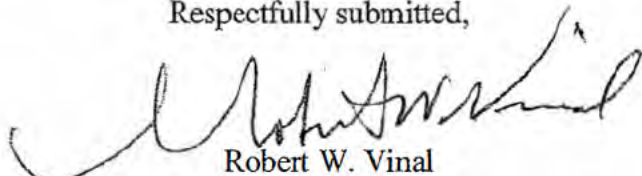
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB attorney recommended that Respondent forfeit seven vacation days as a penalty.

Although Respondent has been found guilty of frisking and searching a civilian without requisite legal authority, it is not disputed that Respondent possessed the requisite level of suspicion to lawfully stop the civilian. In formulating a penalty recommendation I have also taken into consideration Respondent's excellent performance evaluations and the fact that Respondent has no prior formal disciplinary record.

It is recommended that Respondent forfeit five vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

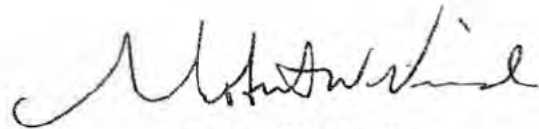


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DONALD ALEXANDRE
TAX REGISTRY NO. 937856
DISCIPLINARY CASE NO. 2013-9623

Respondent received an overall rating of 4.5 on his 2013 evaluation, 4.5 on his 2011 evaluation, and 4.5 on his 2010 evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]. He has no prior formal disciplinary record. He was placed on Level 1 Force monitoring on April 19, 2012 for having received three or more CCRB complaints during a one year period. This monitoring is continuing.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials